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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.193 OF 2002

Mangesh Ramchandra Bhuravane)
Age : Adult, Occ.: Service)
R/o.Plot No.4, New Goutam Nagar)
Shaktishali Mitra Mandal, Bit.No.2-B)
Near Devnar Police Chowky)
Mumbai 400 043)
(Presently at Yerwada Jail, Pune.).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.P.R. Arjunwadkar for the Appellant.

Mr.F.R. Shaikh, Additional Public Prosecutor,
for the Respondent.

**CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.**

DATED: 25TH SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. This Appeal is directed against the judgment dated 11th January 2002 of the Additional Sessions Judge, Greater Bombay in Sessions Case No.584 of 1999. The Sessions Court has convicted the Appellant for an offence punishable under Section 302 of the Indian Penal Code and has sentenced him to suffer life imprisonment as also to pay a fine of Rs.2,000/-.

2. The charge against the Appellant is that on 11th February 1999 he killed his employer, Mehul Mehta, in the printing press where he was working between 8.30 and 9.00 in the morning. The prosecution has examined nine witnesses to support its charge against the Appellant.

Two of these witnesses, PW4 and PW5, who were Watchmen employed in the Industrial Estate where the printing press was situated, have been declared hostile. PW1 is the Complainant and the brother of the deceased. PW2 is a canteen worker examined to establish the presence of the Appellant in the premises between 8.30 and 9.00 a.m. on 11th February 1999. PW3 is a co-worker of the Appellant. PW7 and PW8 are panch witnesses who have proved the discovery panchanama and the seizure panchanama respectively. PW9 is the Investigating Officer.

3. The case of the prosecution is clearly based on circumstantial evidence. PW1 has deposed that on 10th February 1999 he and the deceased left the place of work at about 5.30 pm., when the Appellant had informed them that he would not be reporting for duty the next day. He has then disclosed that he spoke to his brother at about 8.00 a.m. on 11th February 1999 when his brother conveyed to him that the Appellant had reported for duty and that he i.e. PW1 should bring along with him the printing material to the press. He reached the press at about 9.00 a.m. and noticed the workers employed standing in the lobby outside the press. On enquiries with the workers, he was informed that there is no response to the door bell and therefore PW1 opened the door of the press with a duplicate key. He and the workers entered into the premises and they found Mehul lying in a pool of blood with injuries on his person. A

Doctor was called who declared Mehul dead. An FIR was lodged by the Complainant with the police. In the cross-examination, he has stated that the key of the door of the press was available only with the members of the family and nobody else. He has admitted that there was another door to the press at the back. However, there is no indication as to whether this door was locked. Furthermore, the prosecution has not established in any manner that the Complainant had in fact received a phone call from his brother at about 8.30 a.m. on 11th February 1999. The prosecution could have produced records from the telephone department to establish that a phone call was received by the Complainant on that day to corroborate the evidence of the Complainant. Therefore, the presence of the Appellant in the press at 8.30 a.m. has not been established with certainty.

4. The next witness examined by the prosecution is a worker of a canteen adjoining the Industrial Estate where the press is situated. This witness has stated that when he was on duty on 11th February 1999, he noticed one worker, whom he identified in Court, sitting near the pump house. He has admitted that he did not know the Appellant nor did he know his name. His statement was recorded two day’s after the incident had occurred. The evidence of this witness does not inspire confidence. It is difficult to accept his statement that he was able to identify the Appellant while he was

working as a waiter and there was always a rush of customers in the canteen as testified by him in the cross-examination.

5. PW3, who is the co-workman of the Appellant, has categorically stated that he had not seen the Appellant on the day of the incident. He has deposed that his duty hours were from 9.00 a.m. to 5.30 p.m. However, there is no evidence on record indicating the exact time when he reached the printing press. He has denied in the cross-examination that he reached the press at 8.45 a.m. This witness again is of no use to the prosecution as the presence of the Appellant in the press at the relevant time has not been established through his testimony.

6. PW6 is the Doctor who examined the Appellant on 12th February 1999. He has deposed that the Appellant had incised wounds on his right palm which could have been caused due to a sharp weapon. The Appellant had also sustained burn injuries due to acid on his left forearm causing superficial burns of the epidermis. The Doctor has stated that all the three injuries could have been caused about twenty four hours prior to his examination of the Appellant.

7. PW7 is the panch witness who has deposed to the discovery panchanama in respect of the knife, napkin and cheque book recovered at the instance of the Appellant.

He has also deposed regarding the seizure of a plastic can and plastic pot. The knife and the cheque book were recovered, according to this witness, from the residence of the Appellant. PW8 is the panch witness examined to prove the seizure of the clothes of the accused. PW9 is the Police Officer who was examined to prove the investigations. However, he was not the person who actually conducted the investigation.

8. The theory of the prosecution is that the Appellant reached the printing press between 8.30 and 9.00 a.m. on 11th February 1999, killed the deceased and left the place. They have relied on the following circumstances in order to establish their case :

(i) The telephone call received by PW1 from the deceased;

(ii) The Appellant having been noticed by PW2 between 8.30 and 9.00 a.m. on that day on or near the pump house;

(iii) The recovery of a plastic can containing traces of phosphoric acid;

(iv) Seizure of blood stained clothes of the Appellant;

(v) Seizure of the knife with human blood stains on

it;

(vi) Phosphate resulting from the use of phosphoric acid detected on the apparel of the deceased;

(vii) Burn injuries found on the deceased and various injuries described in the post mortem report seen on the deceased;

(viii) The burn injuries found on the palm of the Appellant.

9. The prosecution has relied on the evidence of PW1 in order to establish the presence of the Appellant at the scene of offence between 8.30 and 9.00 a.m. on 19th February 1999. The evidence shows that a phone call was received by the witness from his brother at approximately 8.30 a.m. The prosecution, however, has not proved that such a phone call was actually received by the witness by producing the telephone records which could have been easily available to the prosecution. Therefore, the presence of the Appellant at the scene of the offence is in doubt. Furthermore, the reliance placed on the evidence of PW2 is also without any basis. It is improbable that a waiter in a canteen which has customers all day long would be able to recognise the person sitting near or on the pump house which is on the plot adjacent to the one where the canteen is situated. There is no evidence on record as to how this witness

knew the Appellant and how he could have recognised him after seeing him once sitting near or on the pump house.

10. The recoveries which the prosecution has relied on have been made without following the proper procedure. The panch witnesses have stated that these recoveries were made by the police and they were directed to sign the panchanamas in the police station. They were not present when the recoveries were actually made. In such circumstances, it is difficult to accept the version of the prosecution. Furthermore, the seizure of the blood stained clothes of the Appellant was effected a couple of days later. There is no evidence as to whether the blood stains were those of the deceased. The seizure of the blood stained clothes of the deceased disclosed that the blood stains belonged to "O" group. There is no evidence on record to show that the blood of this group was found on the person of the Appellant. Apart from this, the Appellant had sustained injuries on his right palm and burn injuries on his left palm. These injuries have not been explained by the prosecution at all. The injuries on the palm had started festering. The Doctor has opined that the pus would start forming only after a period of 36 to 48 hours. Admittedly, the death of the deceased occurred between 8.30 and 9.00 a.m. In such circumstances, it cannot be said with certainty that it is the Appellant who had killed the deceased. The recovery of the plastic can also is in doubt and hence

no reliance can be placed on the recovery of this can. There is no doubt, as can be seen from the report of the Chemical Analyser, that the clothes of the deceased had phosphoric acid on them, but this by itself would not indicate that it was the Appellant who was responsible for the death of the deceased.

11. Since the prosecution has failed to establish the presence of the Appellant at the scene of the offence, we are afraid that the case of the prosecution cannot be accepted. The impugned judgment of the trial Court is, therefore, set aside.

12. Appeal allowed. The impugned judgment and order dated 11th January 2002 passed by the Adhoc Additional Sessions Judge, Greater Bombay in Sessions Case No.584 of 1999 is set aside. The Appellant be released forthwith, if otherwise not required in law.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)